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reimburse CCC for distributions previously issued, if applicable.

[63 FR 17312, Apr. 9, 1998, as amended at 71 FR 42750, July 28, 2006]

§ 1425.19 Member cooperatives.

A CMA may obtain loans or LDP's on behalf of a member cooperative when the member cooperative is itself a CMA operating in accordance with this part. Loans and LDP's are restricted based on the CMA obtaining the loan or LDP.

§ 1425.20 [Reserved]

§ 1425.21 Records required.

(a) A CMA shall maintain records for each loan or LDP commodity showing the quantity:

(1) Received from each member and nonmember;

(2) Eligible for loans and LDP's;

(3) By quality factors specified in the applicable commodity regulations including class, grade, and quality, where applicable; and

(4) Of unprocessed inventory broken down by items 1 through 3 above.

(b) Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until all inventory in a loan pool is depleted:

(1) For processed commodities, the pool's inventory shall be adjusted when the commodity is withdrawn from inventory for processing; and

(2) For commodities that are not processed, the pool's inventory shall be allocated to the pool and the pool's inventories adjusted when the commodity is shipped.

(c) Records of loan and non-loan pool dispositions do not have to be maintained separately when sales proceeds from pools are allocated according to the quantity and quality of commodity in the pools.

§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the CMA and subsidiaries shall be maintained for five years after the applicable crop year and shall be available to CCC for inspection and examination at all reasonable times.

(b) At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the CMA is op-

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erating or has operated in accordance with the regulations in this part, its articles of incorporation or articles of association, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.23 Reports.

(a) CMA's shall annually provide CCC a report of all commodity deliveries involved in loans and LDP's by FSA farm number for each member.

(b) When requested by CCC, CMA's shall report market gains received on behalf of each member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560-0040.

§ 1425.25 Appeals.

Parts 11 and 780 of this title apply to this part.

[67 FR 64459, Oct. 18, 2002]

PART 1427—COTTON

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AUTHORITY: 7 U.S.C. 7231-7236; 15 U.S.C. 714b, 714c; and Pub L. 110-246.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 2008 through 2012 crops of upland cotton and extra long staple cotton. Rules codified in this part which are issued after October 1, 2008, will not affect the 2007 and prior crops except that changes in the calculation of loan repayment rates that apply to the 2008 crop also apply to 2007 crop loans outstanding at the time of the changes in 2008 crop calculations. Other adjustments for the 2008 crop, such as storage rate adjustments will not apply. These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payment programs shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and loan deficiency payments.

(b) The basic loan rate, the schedule of premiums and discounts, and forms applicable to the cotton marketing assistance loan and loan deficiency payment programs are available from FSA offices. The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Marketing assistance loans and loan deficiency payments will not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

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(d) Notwithstanding the other provisions of this part, a producer may only receive the maximum assistance allowed by part 1400 of this chapter.

(e) Eligible producers, under 7 CFR 1421.4, who produce upland cotton during the 2008 through 2012 crop years on a farm that is not covered under a direct and counter-cyclical program contract, as defined in part 1412 of this chapter, are eligible for marketing assistance loans or loan deficiency payments as are eligible producers who produced commodities on farms covered by such a contract.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65719, Nov. 5, 2008]

§ 1427.2 Administration.

(a) The marketing assistance loan and loan deficiency payment programs shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out by FSA employees, and state and county committees.

(b) No FSA employee or committee may modify or waive any requirement in this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) Correct, or require a correction of an action that is not in compliance with this part; or

(2) Stop an employee from taking an action or decision that is not in accordance with the regulations of this part.

(d) The Executive Vice President, CCC, or a designee may determine any question arising under these programs, and reverse or modify a determination made by an FSA employee or State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the marketing assistance and loan deficiency payment programs.

(f) A representative of CCC may execute marketing assistance loan and loan deficiency payment applications

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and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65719, Nov. 5, 2008]

§ 1427.3 Definitions.

The definitions in this section shall apply for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in part 718 of this title and parts 1412, 1421, 1423, 1425, and 1434 of this chapter shall also apply, except where they conflict with definitions in this section.

Adjusted spot price means the spot price adjusted to reflect any lack of data for base quality to make the adjusted spot price comparable to a spot price assuming the base quality. If base quality spot price data are not available, spot prices for other qualities will be used and adjusted by the average difference between base quality spot prices and those for other qualities over the available observations during the previous 12 months.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved under part 1425 of this chapter which has executed a Cotton Cooperative Loan Agreement on a form prescribed by CCC.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately before use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Classification means the measurement results provided by the Agricultural

Marketing Service (AMS) of color grade, leaf, staple, strength, extraneous matter and micronaire, and for upland cotton, length uniformity.

Commodity certificate exchange means the exchange, as provided in part 1404 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Consumption means the use of eligible cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton means upland cotton and extra loan staple cotton meeting the definition in the definitions of "upland cotton" and "extra long staple (ELS) cotton" in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Cotton storage deficit area means a State, County, or group of contiguous counties within a State, where the production of cotton for the area based on the most recent estimate from the USDA, National Agricultural Statistics Service exceeds the combined approved inside storage capacity less carry-in stocks, of warehouses that have entered into a Cotton Storage Agreement with CCC.

Current Far East shipment price means, during the period in which two daily price quotations are available for the growth quoted for M $1\frac{3}{32}$ inch cotton, CFR (cost and freight) Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Electronic Agent Designation is an electronic record that:

(1) Designates the entity authorized by a producer to redeem all of the cot-

ton pledged as collateral for a specific loan;

(2) Is maintained by providers of electronic warehouse receipts; and

(3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

(1) American-Pima;

(2) All other varieties of the Barbados species of cotton, and any hybrid thereof; and

(3) Any other variety of cotton in which one or more of these varieties predominate.

False packed cotton means cotton in a bale containing substances entirely foreign to cotton; containing damaged cotton in the interior with or without any indication of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing pickings or linters worked into the bale.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a nonrecourse loan entered into between a producer and CCC.

Form G loan means a CCC non-recourse loan entered into between a CMA and CCC.

Good condition means a bale of cotton that, by comparison with the photographic standards of "A Guide for Cotton Bale Standards" of the Joint Cotton Industry Bale Packaging Committee, is determined to be a Grade A or Grade B bale.

Lint Cotton means cotton that has passed through the ginning process.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable loan rate.

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Loan rate is the national loan rate for base quality upland cotton and the national average rate for ELS cotton adjusted by any premiums and discounts determined by CCC.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

- (1) Preparing and executing loan and loan deficiency payment documents;
- (2) Disbursing loan and loan deficiency payment proceeds;
- (3) Accepting loan repayments;
- (4) Handling documents involved with forfeiture of loan collateral to CCC; and
- (5) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the five lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ -inch cotton, C.I.F. northern Europe.

Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the five lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ -inch cotton, C.I.F. northern Europe.

Northern Europe price means, during the period in which only one daily price quotation is available for the growth quoted for M $1\frac{3}{32}$ -inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the five lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ -inch cotton, C.I.F. northern Europe.

Transfer means, depending on the context, the process for a producer or an authorized agent of the producer to:

- (1) Physically relocate cotton loan collateral from one CCC-approved warehouse to another CCC-approved warehouse;
- (2) Exchange an electronic warehouse receipt for a receipt certificated by a

warehouse for delivery under a futures contract without physically relocating the cotton, or

- (3) Do both of the above.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbados species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

Warehouse receipt means a receipt containing the required information prescribed in this part that may or may not be certificated for delivery for a futures-pricing contract, and is:

- (1) For 2008-crop cotton only, a pre-numbered, pre-punched negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC; or

- (2) For 2008 through 2012-crop cotton, an electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations that are approved by FSA to operate such system.

Wet cotton means a bale of cotton that, at a gin, has 7.5 percent or more moisture, wet basis, at any point in the bale.

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 51427, Aug. 30, 2006; 73 FR 30275, May 27, 2008; 73 FR 65719, Nov. 5, 2008]

§ 1427.4 Eligible producer.

(a) To be an eligible producer, the producer must:

- (1) Be an individual, partnership, association, corporation, estate, trust, or other legal entity that produces cotton as a landowner, landlord, tenant, or sharecropper;

- (2) Comply with all provisions of this part; and

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400—Payment Limitation and Payment Eligibility;

(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures; and

(v) 7 CFR part 1405—Loans, Purchases and Other Operations; and

(3) Have made an acreage certification with respect to all the cropland on the farm.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by CCC to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed

share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(2) The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) A CMA may obtain a marketing assistance loan and loan deficiency payments on eligible cotton on behalf of its members who are eligible to receive loans or loan deficiency payments for a crop of cotton. For purposes of this subpart, the term "producer" includes a CMA.

(f) In case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon application to CCC, be made to the persons who would be entitled to the producer's payment under the regulations contained in part 707 of this title.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65719, Nov. 5, 2008]

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the applicant and submitted to CCC or a loan servicing agent. Submissions by cotton clerks must occur within 15 calendar days after the producer signs the forms and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office that is responsible under part 718 of this title for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

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(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the cotton commercial bank within the period of loan availability.

(b) For a bale of cotton to be eligible to be pledged as collateral for a marketing assistance loan or a subject of a loan deficiency payment application, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition and be covered by fire insurance. Bales pledged as collateral for a CCC loan, must be stored inside an approved storage warehouse unless, as determined under § 1427.10, CCC has approved the warehouse to use outside storage for cotton loan collateral for the period of the loan. Bales submitted to CCC for a loan deficiency payment are not subject to the approved storage requirements contained in § 1423.10.

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in §§ 1427.10(e) and 1427.23(a)(4);

(4) Not be false-packed, wet cotton, water-packed, mixed-packed, reginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied and effective for the 2009 crop, not be a flat or modified flat bale;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds net weight may be pledged for loan at 600 pounds net weight.

(10) Be packaged in materials that meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National

Cotton Council of America for the applicable year or that are identified and approved by the Joint Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year, except that producers approved for the outside storage of ELS cotton as provided for in § 1427.10(e) must assure that the packaging materials used for bales stored outside must meet the materials, sealing, and humidity specifications contained in the outside-storage addendum to their ELS cotton marketing assistance loan agreement.

(11) Be ginned by a ginner that:

(i) Has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Has entered into a Cooperating Ginners' Bagging and Bale Ties Certification and Agreement on a form prescribed by CCC, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section and;

(12) Be production from acreage that has been reported timely under part 718 of this title.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be of a grade, strength, staple length, and other factors specified in the schedule of loan rates for ELS cotton;

(2) Have a micronaire specified in the schedule of micronaire premiums and discounts for ELS cotton; and

(3) Have an extraneous matter specified in the schedules of premiums and discounts for extraneous matter for ELS cotton.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been graded by using a High Volume Instrument;

(2) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(3) Have a strength reading specified in the schedule of strength premiums and discounts for upland cotton;

(4) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(5) Have an extraneous matter within the limits specified in the schedule of discounts for extraneous matter for upland cotton; and

(6) Have a uniformity specified in the schedule of uniformity premiums and discounts for upland cotton.

(e) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the cotton that is tendered to CCC for a marketing assistance loan or loan deficiency payment. For the purposes of this part, the term "beneficial interest" refers to a determination by CCC that a person has the requisite title to and control of cotton that is tendered to CCC as collateral for a marketing assistance loan or is the cotton that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in cotton is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(f) Except as provided in paragraph (h) of this section, when requesting a marketing assistance loan, in order to have beneficial interest in the cotton tendered as collateral for the loan, a person must:

(1) Be the producer of the cotton as determined in accordance with § 1427.4;

(2) Have had ownership of the cotton from the time it was planted through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the cotton from the time of planting through the maturity date of the loan. To have control of the cotton, such person must have complete decision making authority regarding whether the cotton will be tendered as collateral for a loan, when the loan will be repaid or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the cotton will be maintained during the term of the loan; and

(g) Except as provided in paragraph (h) of this section, when requesting a loan deficiency payment, in order to have beneficial interest in the cotton a person must:

(1) Be the producer of the cotton as determined in accordance with § 1427.4;

(2) Have had ownership of the cotton from the time it was planted through the date the producer has elected to determine the loan deficiency payment rate; and

(3) Have control of the cotton from the time of planting through the date the producer has elected to determine the loan deficiency payment rate. To have control of the cotton, such person must have complete decision making authority regarding whether a loan deficiency payment will be requested with respect to the cotton; when the loan deficiency rate will be selected; and where the cotton will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) If the cotton has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the cotton to a warehouse approved in accordance with § 1427.10. Delivery of the cotton to a location other than to such an approved warehouse will result in the loss of beneficial interest in the cotton on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day regardless of any other action or agreement between the entity where the cotton was delivered and the producer, unless such an entity has been approved by CCC under § 1427.10.

(h) Notwithstanding paragraphs (f) and (g) of this section, in order to facilitate the handling of situations involving the death of a producer, CCC will consider an estate and a person to whom title to cotton has passed by virtue of State law upon the death of the producer to have beneficial interest in the cotton produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(i) Notwithstanding paragraphs (f) and (g) of this section, a person who purchases or otherwise acquires cotton from a producer under any circumstances does not obtain beneficial interest to the cotton whether such purchase or acquisition is made prior to the harvest of the crop or after harvest except in one instance. CCC will

consider a person to have beneficial interest in cotton if, prior to harvest, such person has obtained title to the growing cotton at the same time that such person obtained full title to the land on which such crop was growing;

(j) A producer will lose beneficial interest in cotton if the producer receives any payment from any person under any contractual arrangement with respect to cotton if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the cotton or control of the cotton prior to or after harvest unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the cotton and such option contains the following provision:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the cotton and beneficial interest in the cotton as specified in 7 CFR 1427.5 shall remain with the producer until the buyer exercises this option to purchase the cotton. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such cotton;

(2) The date CCC claims title to such cotton; or

(3) Such other date as provided in this option.

(k) Absent other provisions causing the producer to lose beneficial interest in the cotton, inclusion in a contract of a provision that allows the producer to select the sales price of the cotton at the time the contract is entered into or at a later date, a contract normally referred to as a deferred price contract or a price later contract, will not result in the loss of beneficial interest in the cotton.

(l) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities and other specialty seeds as approved

in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan and a loan deficiency payment may be made with respect to such production if at the time of the request for such a loan or payment the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

(m) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn under Agricultural Marketing Service (AMS) dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(n) Marketing assistance loans may be disbursed to eligible producers who store upland cotton in unapproved storage facilities only if the producer agrees to redeem the marketing assistance loan on the date on which the loan is disbursed with a commodity certificate exchange.

(o) If marketing assistance loans or loan deficiency payments are made available to producers through a CMA under part 1425 of this chapter, the beneficial interest in the cotton must always have been held by the producer-member who delivered the cotton to the CMA or its member, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a marketing assistance loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004; 71 FR 32426, June 6, 2006; 71 FR 51427, Aug. 30, 2006; 71 FR 60413, Oct. 13, 2006; 73 FR 65719, Nov. 5, 2008]

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§ 1427.6 Disbursement of loans.

(a) Individual producers may request loans from:

- (1) FSA County Service Centers;
- (2) Loan servicing agents; or
- (3) An approved cotton clerk who has entered into a written agreement with CCC on a form prescribed by CCC.

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible under § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008]

§ 1427.7 Maturity of loans.

(a)(1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed under § 1427.5(a).

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

(c) Following written notice by CCC to the producer and warehouse operator, CCC may advance the maturity date of cotton pledged as collateral for a marketing assistance loan if:

(1) CCC determines such loan cotton collateral is improperly warehoused and subject to damage,

(2) Any term of the producer's loan agreement is violated, or

(3) Carrying charges are substantially in excess of the average of carrying charges available elsewhere and

the storing warehouse, after notice, declines to reduce such charges.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008]

§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) of this section by the applicable loan rate.

(d) CCC will not increase the amount of the loan made for any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made for the weight of the bale or the classification for the bale, such error may be corrected.

(e) The loan rate as determined under paragraph (a) of this section adjusted for applicable premiums and discounts will be reduced by 30 percent during each of the 2009 through 2012 crop years for producers who make an irrevocable election to receive "Average Crop Revenue Election" program payments as provided in § 1412 of this title or elsewhere in this title.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008]

§ 1427.9 Classification of cotton.

(a) All cotton tendered for loan and loan deficiency payment must be classed by an AMS Cotton Classing Office or other entity approved by AMS.

(b) An AMS cotton classification must be based upon a representative

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sample drawn from the bale by samplers under AMS procedures and instructions.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse must sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by AMS. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved:

(1) If through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate will be based on the classification having the lower loan value;

(2) CCC will use classification information received directly from AMS rather than AMS classification information received from the producer.

(f) CCC will base any cotton loan rate or loan deficiency payment rate on the most recent classification information available before the loan or loan deficiency payment has been calculated. CCC will not adjust such rates based on review classification information submitted subsequent to the original benefit calculation.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008]

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC, unless the producer agrees to provisions of 1427.5(n).

(1) Persons desiring approval of their facilities should contact the Kansas City Commodity Office Beacon Facility-Mail Stop 8748, P.O. Box 419205, Kansas City, Missouri 64141-6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made on a bale of cotton, the operator shall, if such cotton is not

stored within the warehouse, as directed by CCC place such cotton within such warehouse.

(c) An approved cotton storage warehouse may temporarily store cotton pledged as collateral for a CCC loan outside, subject to the following conditions:

(1) The warehouse submits a request for approval of outside storage in a format prescribed by CCC.

(2) The warehouse is located in a storage deficit area as determined by CCC.

(3) The warehouse complies with all outside storage requirements established by CCC including but not limited to the duration of such outside storage as granted by CCC for the individual application, all-risk insurance for the loan value of the cotton with CCC as loss payee, and use of additional protective coverings and materials that elevate the entire bottom surface of the bale to protect such cotton from damage by water or airborne contaminants.

(4) The electronic warehouse receipt for any bale or bales of cotton pledged as collateral for a CCC loan must include the dates that the bale was initially stored outside, and the date that outside storage stopped.

(5) The warehouse operator provides CCC:

(i) A weekly report in a format prescribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside, and

(ii) Through their electronic warehouse receipt provider, on a current basis, location indicators and effective dates for any loan bale stored outside.

(d) Warehouse charges paid by a producer will not be refunded by CCC.

(e) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

(f) With respect to crops of ELS cotton, a producer may obtain a loan on cotton that is not stored as otherwise provided in this section if such cotton is stored:

(1) At a commercial entity that is involved in the handling or storage of cotton in a county or area determined

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and announced by CCC as approved for outside storage of ELS loan collateral; and

(2) The site is constructed so as to prevent the accumulation of water under such cotton.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004; 71 FR 51427, Aug. 30, 2006; 73 FR 65720, Nov. 5, 2008]

§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or before the date the producer signs the note and security agreement.

(b) Warehouse receipts, under § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its terms the tare and the net weight of the bale represented by the receipt. The net weight shown on the warehouse receipt must be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if gin weights are permitted by the licensing authority for the warehouse.

(2) The tare weight shown on the receipt must be the tare weight furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare weight, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC,

duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),

By (Signature or initials),

Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact.

(f) The warehouse receipt must show the compression status of the bale; *i.e.*, flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65720, Nov. 5, 2008]

§ 1427.12 Liens.

(a) Waivers that fully protect the interest of CCC must be obtained before loan disbursement, notwithstanding provisions in § 1427.19(h), if there are any liens or encumbrances on the cotton tendered as collateral for a loan, even though the liens or encumbrances are satisfied from the loan proceeds, except that CCC may elect to waive such lien requirements for loans having a principal value of less than \$50,000.

(b) CCC may elect to accept cotton as loan collateral that has warehouse receiving, compression, or other charges without a lien waiver if the producer at the time of loan application agrees to reimburse CCC for any such charges that CCC may pay on behalf of the producer or that reduce the value of the cotton delivered to CCC.

[71 FR 51427, Aug. 30, 2006, as amended at 73 FR 65721, Nov. 5, 2008]

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§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Such fee shall be in addition to a cotton clerk fee paid under paragraph (b) of this section. The fee amounts are available in State and county offices and are shown on the note and security agreement. Fees shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available from CCC and is shown on the note and security agreement.

(c) Interest which accrues for a loan shall be determined under part 1405 of this chapter. All or a portion of such interest may be waived for a quantity of upland cotton which has been redeemed under § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the date that all required documents were provided to CCC; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

(3) Any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan and paid by CCC to the warehouse that:

(i) Exceed CCC's maximum storage credit rate for the warehouse established in § 1427.19 and

(ii) Were paid by CCC for periods subject to denied storage credits due to the cotton being stored outside as specified in § 1427.19(h)(2)(ii).

(4) Unpaid warehouse compression charges.

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 51427, Aug. 30, 2006; 73 FR 65721, Nov. 5, 2008]

§ 1427.14 [Reserved]

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on cotton eligible to be pledged as collateral for a marketing assistance loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the marketing assistance loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To marketing assistance loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan documents, except for:

(i) Authorized cotton clerk fees;

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and

(iii) CCC loan service charges.

(c)(1) All marketing assistance loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the marketing assistance loans or loan deficiency payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by a Transmittal Schedule of Loan and Loan Deficiency Payment Documents (Transmittal) on a form prescribed by CCC, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advance. The Transmittal shall show the amounts invested by the person, firm, or financial institution in the marketing assistance loans or loan deficiency payments.

(3) Upon receipt of the marketing assistance loan or loan deficiency payment documents and Transmittal, the county office will stamp one copy of the Transmittal to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date marketing assistance loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(e) Interest will be computed on the total amount invested by the person, firm, or financial institution in the marketing assistance loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by CCC.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by CCC after the end of the month.

§ 1427.16 Movement and protection of warehouse-stored cotton.

(a) CCC may insure or reinsure stored cotton against any risk, or otherwise take an action it deems necessary to protect the interest therein of CCC.

(b) A producer may transfer cotton loan collateral subject to the following conditions:

(1) The cotton is represented by an electronic warehouse receipt;

(2) The request is submitted by a producer or a properly designated agent of the producer;

(3) The transfer is agreed to by the receiving warehouse operator;

(4) The CCC marketing assistance loan that is secured by such cotton matures at least 30 days after the date on which the request for the transfer is submitted to CCC; and

(5) Any charges, fees, costs, or expenses incident to the transfer of cotton loan collateral under this paragraph must be paid by the requestor of the transfer.

(c) CCC will exclude from the calculation of any storage credits payable under § 1427.19 the following periods:

(1) The period during which the cotton is in transit between warehouses; and

(2) Any period beyond 75 days starting from the date of transfer from the shipping warehouse, unless the shipping warehouse is:

(i) Not in compliance with any of the terms of its Cotton Storage Agreement, (ii) Storing cotton loan collateral outside, or

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(iii) Under common ownership with the receiving warehouse.

[71 FR 51427, Aug. 30, 2006, as amended at 73 FR 65721, Nov. 5, 2008]

§ 1427.17 [Reserved]

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a marketing assistance loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the marketing assistance loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC for the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages under paragraph (e) of this section; and

(vi) About amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2) If a producer makes a fraudulent representation or if the producer has disposed of, or moved the loan collateral without prior written approval from CCC, the value of such collateral will be equal to its loan value, plus accrued interest, plus warehouse charges, and liquidated damages, as determined by CCC.

(b) If the amount disbursed under a marketing assistance loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such

loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the marketing assistance loan or loan deficiency payment is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and this subpart. Each producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to their share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application for the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of their requests for a loan or any applicable form required by CCC, liquidated damages shall be assessed on the quantity involved in the violation. Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(f) When it has been determined that a violation of the terms and conditions of a loan deficiency application has occurred, CCC will determine the quantity of the cotton involved with respect

to such violation and assess liquidated damages by multiplying the quantity of cotton involved in the violation by 10 percent of the marketing assistance loan rate.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages under paragraph (e) of this section; and

(2) Call the applicable marketing assistance loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and for a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation under paragraph (e) of this section, CCC shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken under paragraph (f) or (g) of this section.

(i) If CCC accelerates the maturity date for a loan under this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate under §1427.19 or utilize the provisions of part 1401 of this chapter for such loan.

(j) Any or all of the liquidated damages assessed under paragraph (e) of this section may be waived as determined by CCC.

(k)(1) Notwithstanding any other provision of this part, for ELS cotton stored as provided in §1427.10(f), the producer shall be liable for all costs associated with the storage of the cotton while it is stored outside. CCC shall make no storage payment or any other payment with respect to ELS cotton stored as provided in §1427.10(f).

(2) The producer of ELS cotton which is stored as provided in §1427.10(f) shall:

(i) Certify the quantity of such cotton on the loan application; certify the cotton is packaged in a hermetically sealed bag with an internal humidity level established by the gin as appropriate to safeguard the cotton; certify that packaging materials meet or exceed industry minimum standards; certify that the storage area is suitable for cotton storage and is in an area approved by CCC; certify that the storage area is constructed to prevent water accumulation under the cotton and is outside a 100-year floodplain; and certify that the storage area is serviced by bale handling and transport equipment that will not damage the sealed bag or degrade the storage area;

(ii) Be responsible for any loss in quantity or quality of such cotton;

(iii) If the loan is satisfied by forfeiting the cotton to CCC, be responsible for all costs associated with delivering such cotton to a warehouse designated by CCC, all costs associated with any re-classification and repackaging that may be required by CCC or the warehouse operator to whom the cotton is delivered, all charges by the receiving warehouse for receiving the cotton and issuing an electronic warehouse receipt for the cotton, and other charges as may be levied by the warehouse specific to outside-stored cotton; and

(iv) Not move such cotton after the loan application is submitted to CCC without prior written approval of the county committee. Failure of the producer to receive such permission shall subject the producer to administrative actions.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004; 71 FR 32427, June 6, 2006; 73 FR 65721, Nov. 5, 2008]

§ 1427.19 Repayment of loans.

(a) Warehouse receipts pledged as collateral for a CCC loan will not be released except as provided in this section.

(b) A producer, an authorized agent or anyone subsequently designated by the producer in the manner prescribed by CCC may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being

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redeemed determined under this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized in writing in a manner prescribed by CCC may repay the loan amount for one or more bales of cotton pledged as collateral for a marketing assistance loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC under §1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or cotton commercial bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton under §1427.7.

(g) In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under §1427.25(e).

(h) For purposes of calculating loan-period accrued storage charges that CCC may credit to the loan repayment amount under paragraph (i) of this section:

(1) The warehouse storage rates to be used for the 2008 through 2011 crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California \$3.93 per bale per month and for warehouses located in all States other than Arizona and California \$2.39 per bale per month.

(2) The warehouse storage rates to be used for the 2012 and subsequent crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California \$3.50 per bale per month and for warehouses located in all States other than Arizona and California \$2.13 per bale per month.

(3) CCC will not credit the loan repayment amount for a bale for any storage charges that accrued while the cotton was stored outside, except that storage may be credited for up to 15-days of outside storage beginning on the day the warehouse was notified that the bale is under loan if the bale was inside on the 15th day from the date of notification.

(4) The loan period will be determined by CCC to begin:

(i) For loan disbursed by the Farm Service Agency, on the date all loan documents, as determined and announced by CCC, have been received or

(ii) For a loan disbursed by a Cooperative Marketing Association or an authorized loan servicing agent, on the date the loan was disbursed by CCC.

(i)(1) An upland cotton loan repayment rate will not exceed the loan principal plus accrued interest for the period provided in §1427.19(j).

(2) When the prevailing adjusted world price of upland cotton, as determined under §1427.25, is less than the combined value of the loan principal, accrued interest, and warehouse storage that accrued during the period of the loan, CCC will permit the loan to be repaid at the adjusted world price less the storage charges that accrued during the period of the loan.

(j) For purposes of calculating interest charges on upland and extra long staple cotton loan principal, the loan period will be the period starting the date after the disbursement of the loan amount to, and including, the loan repayment date, except that interest is

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not charged for a loan that is disbursed and repaid on the same date.

(k) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 51428, Aug. 30, 2006; 73 FR 65721, Nov. 5, 2008]

§ 1427.20 Handling payments and collections not exceeding \$9.99.

Amounts of \$9.99 or less will be paid to the producer only at their request. Deficiencies of \$9.99 or less, including interest, may be disregarded unless CCC demands in writing that they be paid.

§ 1427.21 Settlement.

(a) The settlement of cotton loans will be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC subject to the producer being responsible for, if applicable, warehouse receiving charges, new bale ties, unpaid warehouse compression, charges for and related to the certification of a bale and for any subsequent exchange of certificated receipts, storage charges for any period of yard storage, and storage charges in excess of any maximum storage credit rates as determined and announced by CCC.

(b) For purposes of settlements for cotton delivered to CCC in satisfaction of a loan obligation, CCC may elect to calculate such settlement values based on the net weight, condition, and classification as reflected on the warehouse receipt delivered to CCC, whether such receipt is the receipt issued by the original storing warehouse and presented for calculating the loan amount or a receipt issued by a subsequent warehouse due to the transfer of such bale while pledged as collateral for a CCC loan.

(c) If a producer does not pay CCC the amount due under a loan, CCC shall take title to the cotton as provided in § 1427.7(b).

(d) With respect to ELS cotton which is stored as provided in § 1427.10(f), settlement of loans shall be made based upon the determination of the quantity and quality made by CCC at the time of acceptance of the cotton by CCC at the

warehouse designated by CCC as provided in § 1427.18(k).

(e) If CCC sells the commodity described in paragraph (a) of this section in settlement of the recourse loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. When CCC sells any cotton obtained by forfeiture under a marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the cotton and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the cotton to CCC.

(f) CCC will pay to the warehouse any unpaid storage or receiving charges for forfeited loan collateral, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the loan maturity date, as soon as practicable after the cotton is forfeited.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49329, Aug. 18, 2003; 71 FR 32427, June 6, 2006; 73 FR 65721, Nov. 5, 2008]

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral. This provision terminates effective ending with the 2009 crop and will not be available for subsequent crops.

(b) The exchange rate is the lesser of:

(1) The loan rate and charges, plus interest applicable to the loan, or

(2) The adjusted world price for cotton as determined by CCC.

(c) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:

(1) Completing a written request as CCC determines,

(2) Purchasing a commodity certificate for the exact amount required to

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exchange the marketing assistance loan collateral, and

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65722, Nov. 5, 2008]

§ 1427.23 Cotton loan deficiency payments.

(a) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton marketing assistance loan eligibility requirements under this subpart;

(2) Agree to forgo obtaining such loans unless denied a loan deficiency payment due to payment limitation;

(3) Submit, on a form prescribed by CCC, to the FSA Service Center on or before beneficial interest is lost in such quantity and before the final loan availability date for the commodity:

(i) An indication of their intentions to receive a loan deficiency payment on the identified commodity or

(ii) A completed request for a loan deficiency payment for a quantity of eligible cotton under § 1427.5(a).

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) For loan deficiency payments requested before ginning of the cotton based on a locked-in adjusted world price, provide identifying numbers for modules or other storage units that will correspond to the gin-assigned numbers of the bales produced from the unginmed cotton; and

(6) Otherwise comply with all program requirements.

(b) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined under paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan, excluding any quantity for which the producer obtains a marketing assistance loan.

(c) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds

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the adjusted world price, as determined by CCC under § 1427.25, in effect on the day the request is received by, the county office, loan servicing agent, or cotton commercial bank. In no case shall the loan deficiency payment rate for a bale exceed the value of the bale had it been pledged as collateral for a marketing assistance loan.

(d) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(e) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified under § 1427.5(c) on the date the cotton was ginned, and the producer meets all the other requirements in paragraph (a) of this section on or before the final date to apply for a loan deficiency payment under § 1427.5, the loan deficiency payment rate applicable to such cotton will be:

(1) Based on the date the cotton was ginned, which CCC will consider to be the date of the LDP request, if payment application is made in the manner prescribed by CCC for obtaining such rate;

(2) Based on the date of request for lock-in of the adjusted world price if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(3) Based on the date a completed request including production evidence is submitted in the manner prescribed by CCC for obtaining such rate.

(f) In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. Eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under § 1427.25(e).

[67 FR 64459, Oct. 18, 2002, as amended at 71 FR 32427, June 6, 2006; 73 FR 65722, Nov. 5, 2008]

§ 1427.24 [Reserved]

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) CCC will determine the world market price for upland cotton as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M $1\frac{3}{32}$ -inch) cotton, CFR (cost and freight) Far East, the prevailing world market price for upland cotton will be based on the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ -inch cotton, CFR Far East.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current Far East shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward Far East shipment price) are available for growths quoted for M $1\frac{3}{32}$ -inch cotton, CFR Far East, the prevailing world market price for upland cotton will be based on the average of the current Far East shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ -inch cotton, CFR Far East, except as may be determined by the Secretary as specified in paragraph (c)(3)(iv) of this section.

(3) The upland cotton prevailing world market price determined as specified in paragraphs (a)(1) or (a)(2) of this section is referred to as the "Far East price" (FE).

(4) If quotes are not available for 1 or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price will be based on the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted as specified in paragraph (c) of this section (adjusted world price (AWP)), will apply to

the 2008 through 2012 crops of upland cotton and to the 2007 crop to the extent provided in § 1427.1.

(c) The upland cotton AWP will equal the FE determined as specified in paragraph (a) of this section, adjusted as follows:

(1) FE will be adjusted to U.S. location by deducting the average costs to market, including average transportation costs, as determined by the Secretary.

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for M $1\frac{3}{32}$ -inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for base quality upland cotton.

(3) The prevailing world market price, adjusted as specified in paragraphs (c)(1) and (c)(2) of this section, may be further adjusted if it is determined that the adjustment is necessary to:

(i) Minimize potential loan forfeitures;

(ii) Minimize the accumulation of stocks of upland cotton by the Federal Government;

(iii) Ensure that upland cotton produced in the United States can be marketed freely and competitively, both domestically and internationally; and

(iv) Ensure an appropriate transition between current-crop and forward-crop price quotations, except that forward-crop price quotations may be used prior to July 31 of a marketing year only if there are insufficient current crop quotations and the forward-crop price quotation is the lowest such quotation available.

(d) The upland cotton AWP, determined as specified in paragraph (c) of this section, and the amount of the additional adjustment determined as specified in paragraphs (e) and (f) of this section, will be announced, to the extent practicable, at 4 p.m. eastern time each Thursday continuing through the last Thursday of March 2014 (March 27, 2014). In the event that

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Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next work day.

(e)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further coarse count adjustment as provided in this section regarding all qualities of upland cotton eligible for loan except the following upland cotton grades with a staple length of $1\frac{1}{16}$ -inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade, leaf, and staple length must be determined as specified in § 1427.9. If no such official classification is presented, the coarse count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (e)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for “coarse count” cotton, CFR Far East, is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, CFR Far East (Far East coarse count price); or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for “coarse count” cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, CFR Far East (Far East coarse count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for M $1\frac{3}{32}$ -inch, leaf 3, (micronaire

3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop for SLM $1\frac{1}{32}$ -inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton.

(3) Regarding the determination of the Far East coarse count price specified in paragraph (e)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (e)(2) of this section for the latest available week will continue to be applicable.

(f)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further fine count adjustment as provided in this section regarding all upland cotton having a loan schedule premium or discount exceeding that for Middling, leaf 3, staple length $1\frac{3}{32}$ -inch upland cotton, and

(ii) Grade, staple length, and leaf must be determined as specified in § 1427.9. If no such official classification is presented, the fine count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (f)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for “fine count” cotton, CFR Far East, is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for “fine count” cotton, CFR Far East (Far East fine count price) or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are

available for the growths quoted for “fine count” cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “fine count” cotton, CFR Far East (Far East fine count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for M 1 $\frac{3}{32}$ -inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for an upland cotton crop for SM 1 $\frac{1}{8}$ -inch, leaf 2, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton.

(3) Regarding the determination of the Far East fine count price under paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) In the determination of FE as specified in paragraph (a)(2) of this section, the Far East coarse count price specified in paragraph (e)(2)(i)(B) of this section, and the Far East fine count price as specified in paragraph (f)(2)(i)(B) of this section, CCC will use either current Far East shipment prices, forward Far East shipment prices, or any combination thereof to determine FE or the Far East coarse count price or the Far East fine count price used in the determination of the adjustment for upland cotton specified in paragraphs (e)(1) and (f)(1) of this section and determined as specified in paragraphs (e)(2) and (f)(2) of this section to prevent distortions in such adjustment.

(h) For particular bales, the AWP determined as specified in paragraph (c) of this section, will be subject to further adjustments to a value no less than zero, as CCC determines, based on the Schedule of Premiums and Discounts as announced for the loan program for an upland cotton crop.

[73 FR 65722, Nov. 5, 2008]

Subpart B [Reserved]

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

SOURCE: 73 FR 65723, Nov. 5, 2008, unless otherwise noted.

§ 1427.100 Applicability.

(a) Regulations in this subpart are applicable beginning August 1, 2008. These regulations specify the terms and conditions under which CCC will make payments to eligible domestic users who entered into an Upland Cotton Domestic User Agreement with CCC to participate in the upland cotton domestic user program under section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, referred to commonly as the “2008 Farm Bill”).

(b) CCC will prescribe forms used in administering Economic Adjustment Assistance to Users of Upland Cotton.

§ 1427.101 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is baled upland cotton, regardless of origin, that is opened by an eligible domestic user on or after August 1, 2008, and is either:

(1) Baled lint, including baled lint classified by USDA’s Agricultural Marketing Service as Below Grade;

(2) Loose samples removed from upland cotton bales for classification purposes that have been rebaled;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking, or production of non-woven fabric; or

(4) Re-ginned (processed) motes.

(b) Eligible upland cotton must not be:

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(1) Cotton for which a payment, under the provisions of this subpart, has been made available;

(2) Raw (unprocessed) motes, pills, linters, or other derivatives of the lint cleaning process; or

(3) Textile mill wastes.

§ 1427.102 Eligible domestic users.

(a) For purposes of this subpart, a person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of spinning, papermaking, or processing of non-woven cotton fabric in the United States, who has entered into an agreement with CCC to participate in the upland cotton user program, will be considered an eligible domestic user.

(b) Applications for payment under this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User Agreement and other instructions that CCC issues.

§ 1427.103 Upland cotton Domestic User Agreement.

(a) Payments specified in this subpart will be made available to eligible domestic users who have entered into an Upland Cotton Domestic User Agreement with CCC and who have complied with the terms and conditions in this subpart, the Upland Cotton Domestic User Agreement, and instructions issued by CCC.

(b) Upland Cotton Domestic User Agreements may be obtained from Contract Reconciliation Division, Kansas City Commodity Office (KCCO), P.O. Box 419205, Stop 8758, Kansas City, Missouri 64141-6205. In order to participate in the program authorized by this subpart, domestic users must execute the Upland Cotton Domestic User Agreement and forward the original and one copy to KCCO.

§ 1427.104 Payment rate.

(a) Beginning August 1, 2008 and ending July 31, 2012, the payment rate for purposes of calculating payments as specified in this subpart will be 4 cents per pound.

(b) Beginning August 1, 2012, the payment rate for purposes of calculating payments as specified in this subpart will be 3 cents per pound.

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§ 1427.105 Payment.

(a) Payments specified in this subpart will be determined by multiplying:

(1) The payment rate, determined as specified in § 1427.104, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in paragraph (b) of this section, of eligible upland cotton bales an eligible domestic user opens during the immediately preceding calendar month.

(b) For the purposes of this subpart, the net weight will be determined based on the net weight of the cotton used, but not to exceed the last available certified weight;

(c) For the purposes of this subpart, eligible upland cotton will be considered consumed by the domestic user on the date the bale is opened for consumption.

(d) Payments specified in this subpart will be made available upon application for payment and submission of supporting documentation, as required by the CCC-issued provisions of the Upland Cotton Domestic User Agreement.

(e) All payments received by the agreement holder must be used for purposes as specified in section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, referred to commonly as the 2008 Farm Bill). Authorized expenditures include acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery. Such capital expenditures must be directly attributable and certified as such by the user for the purpose of manufacturing upland cotton into eligible cotton products in the United States.

Subpart D—Recourse Seed Cotton Loans

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.160 Applicability.

(a) This subpart is applicable to the 2008 through 2012 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed

cotton loans shall be made available by CCC. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms that are used in administering the recourse seed cotton loan program for a crop of cotton are available in FSA State and county offices. Loan rates will be based on the base quality loan rate for upland cotton and the national average loan rate for extra long staple cotton.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

[67 FR 64459, Oct. 18, 2002, as amended at 73 FR 65724, Nov. 5, 2008]

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the

county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not under the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not under the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize waiver or modification of deadlines and other program requirements where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1427.162 [Reserved]

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except

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that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

An eligible producer must meet the requirements of § 1427.4.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

(2) Be stored in identity-preserved lots in approved storage meeting requirements of § 1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely under part 718 of this title; and

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable docu-

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mentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in § 1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.168 [Reserved]

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a non-refundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues for a loan shall be determined under part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined under paragraph (b) of this section.

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the

county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

- (1) Condition or suitability of the storage site or structure;
- (2) Condition of the cotton;
- (3) Location of the storage site or structure; and
- (4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time before maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges thereon must be satisfied not later than the earlier of:

- (i) The date established by the county committee;
- (ii) 5 days after the date of the producer received the AMS classification under § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment under subpart A of this part, on the lint cotton, but:

- (i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan under subpart A of this part; or
- (ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved under subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage before obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

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(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a non-recourse loan under subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan under subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned

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and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC for the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts; and

(v) Liquidated damages under paragraph (e) of this section.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the

sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages under paragraph (e) of this section; and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages under paragraph (e) of this section;

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation under paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken under paragraphs (f) or (g) of this section.

(i) Any or all of the liquidated damages assessed under the provision of paragraph (e) of this section may be waived as determined by CCC.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC-49, "Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,"

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial

statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1427.1082(a)(2) and such other documents or information as CCC may require.

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985]

§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman,

if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of \$25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed \$250,000. If the calculated net worth exceeds \$25,000, the warehouseman may satisfy any deficiency in net worth between the \$25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process and in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

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(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC. CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such

warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least \$25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 56 FR 11502, Mar. 19, 1991]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director,

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KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as "FSA"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton ware-

house must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

§ 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9, 1985]

Subpart F [Reserved]

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

SOURCE: 70 FR 67343, Nov. 7, 2005, unless otherwise noted.

§ 1427.1200 Applicability.

(a) These regulations set forth the terms and conditions under which CCC shall make payments to eligible domestic users and exporters of extra

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long staple cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC.

(b) CCC will issue payments to domestic users and exporters in any week following a consecutive 4-week period in which:

(1) The LFQ is less than the USPFE; and

(2) Adjusted LFQ is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton.

(c) CCC shall prescribe the forms and information collections necessary in administering the ELS cotton competitiveness payment program. Additional terms and conditions for the program are set forth in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1201 [Reserved]

§ 1427.1202 Definitions.

The following definitions apply as used in this subpart:

Consumption means the use of eligible ELS cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C/F Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

ELS means Extra Long Staple.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C/F Far East, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost and freight (C/F) Far East, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality.

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(1) *Adjusted LFQ* means the LFQ adjusted to reflect the estimated cost of transportation between an average U.S. location and destination ports in the Far East.

(2) *LFQc* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C/F Far East.

(3) *LFQf* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C/F Far East.

USPFE means the Friday through Thursday weekly average of the price quotation for base quality U.S. Pima cotton, as determined by CCC for purposes of administering this subpart, C/F Far East.

(1) *USPFEc* means the preceding Friday through Thursday average of the current shipment prices for U.S. Pima cotton, C/F Far East.

(2) *USPFEf* means the preceding Friday through Thursday average of the forward shipment prices for U.S. Pima cotton, C/F Far East.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

(1) Opened by an eligible domestic user on or after June 18, 2008, or

(2) Exported by an eligible exporter on or after June 18, 2008, during a Friday through Thursday period in which a payment rate determined under § 1427.1207 is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or

(2) Loose.

(c) Eligible ELS cotton must not be:

(1) ELS for which a payment, under the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw, unprocessed motes;

(4) Textile mill wastes; or

(5) Semi-processed or re-ginned, processed motes.

[70 FR 67343, Nov. 7, 2005, as amended at 73 FR 65724, Nov. 5, 2008]

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (a domestic user), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (an exporter), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications must contain the documentation required by this subpart, an ELS Cotton Domestic User/Exporter Agreement and additional information that may be requested by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

§ 1427.1206 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart shall be determined as follows:

(1) Beginning the Friday on or following August 1 and ending the week in which the LFQc, the LFQf, the USPFEc, and the USPFEf prices first become available, the payment rate shall be the difference between the USPFE and the LFQ in the fourth week of a consecutive 4-week period in which the USPFE exceeded the LFQ each week, and the adjusted LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday-through-Thursday week after the week in which the LFQc, the LFQf, the USPFEc, and the USPFEf prices first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USPFEc and the LFQc in the fourth week of a consecutive 4-week period in which the USPFEc exceeded the LFQc each week, and the adjusted LFQc was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If either or both the USPFEc and the LFQc are not available, the payment rate may be the difference between the USPFEf and the LFQf.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, LFQc, and LFQf for only one to three weeks, such as may occur in the spring when the LFQ is succeeded by the LFQc and the LFQf (spring transition), and at the start of a new marketing year when the LFQc and the LFQf are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, the LFQc and USPFEc, in combination with the LFQ and USPFE, shall, to the extent practicable, be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both USPFEc price and the LFQc are not available, the USPFEf and the LFQf in combination

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with the USPFE price and LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the USPFE, USPFEc, USPFEf, the LFQ, the LFQc, and the LFQf:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If none of the USPFE, USPFEc, or USPFEf prices is available, or if none of the LFQ, LFQc, or LFQf is available, the payment rate shall be zero and shall remain zero unless and until sufficient USPFE prices or the LFQ again becomes available, the USPFE, USPFEc, or USPFEf price exceeds the LFQ, the LFQc, or the LFQf, as the case may be, and the LFQ, the LFQc, or the LFQf, as the case may be, adjusted for transportation, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose lint that is of a suitable quality, without further processing, for spinning, papermaking or bleaching, shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the

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exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.

PART 1430—DAIRY PRODUCTS

Subpart A—Price Support Program for Milk

Sec.

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1430.221 Estates, trusts, and minors.

1430.222 Death, incompetency, or disappearance.

1430.223 Maintenance and inspection of records.

1430.224 Refunds; joint and several liability.